

Appeal from decision of California State Office, Bureau of Land Management, rejecting a Mining Claims Occupancy Act application. R-977.

Affirmed.

1. Mining Occupancy Act: Principal Place of Residence

BLM may properly reject an application to purchase land pursuant to sec. 1 of the Mining Claims Occupancy Act, as amended, 30 U.S.C. § 701 (1976), where the applicant does not establish that the land was occupied as a principal place of residence by himself or his predecessor in interest for the 7 years prior to July 23, 1962.

APPEARANCES: Charles A. Mitchell, Sr., pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Charles A. Mitchell, Sr., has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated January 27, 1983, rejecting his application to purchase land, R-977, filed pursuant to section 1 of the Mining Claims Occupancy Act (MCOA) of October 23, 1962, as amended, 30 U.S.C. § 701 (1976), and its implementing regulations, 43 CFR Part 2550.

On October 16, 1967, appellant filed an application to purchase land situated in unsurveyed sec. 3, T. 19 N., R. 10 E., San Bernardino meridian, San Bernardino County, California. The land encompasses the April Fool and April Fool No. 1 unpatented mining claims, located April 1, 1947, by Harry Adams and transferred to appellant by quitclaim deed, dated May 2, 1961. In his application, appellant states that the land contains several improvements, namely, three tunnels, a house, corrals, roads, and two developed springs, and that a residence has been on the land since prior to July 23, 1955. By memorandum dated November 8, 1971, the Area Manager, East Desert, recommended to the Chief, Branch of Lands and Minerals Adjudication, that appellant's application be rejected because:

On November 12, 1968, Mr. Mitchell's predecessor in interest filed a signed statement listing the chronology of his principal places of residence during the period of July 23, 1955 through May 2, 1961 \* \* \*.

From the written statement made by Harry Adams, it is evident that the subject residence at Horsethief Springs was not used as a principal place of residence during the qualifying period July 23, 1955 through October 23, 1962.

The November 1968 statement of Harry Adams reads as follows:

Tecopa, California (nearest post office to cabin site) was principal place of residence and voting address during 1955. On or about May of 1956 until August 10, 1958 principal place of residence was 1406 Waterman Ave., San Bernardino, California, and voting address was Tecopa, California. About 3 or 4 days every two weeks or so I would go to the Horse Thief Springs Ranch headquarters to check on mines and cattle operation. A Mr. Ted Wilson watched the headquarters from May of 1956 until August 1958. Beginning in August 1958, my principal place of residence was Tecopa, California, having lived there to August 1960 except for 2 or 3 days every 2 weeks when I went to my Bloomington, California residence. Voting address from August 1958 until May 2, 1961 was Box 322, Bloomington, California. In August of 1960 I moved my cattle to Glen Avon, California.

On May 2, 1961, I entered into escrow with Mr. Charles A. Mitchell to sell the April Fool and the April Fool #1 mining claims and improvements, and moved out and turned property over to Mr. Mitchell.

In its January 1983 decision, BLM rejected appellant's application because "the claims were not a principal place of residence for the applicant's predecessor in interest, and the applicant lived on the claims only a fraction of the time during the qualifying period, July 23, 1955, through October 23, 1962." 1/ BLM relied on the November 1968 statement of Harry Adams and a field investigation of the land in connection with preparation of a land report, dated September 15, 1980.

In his statement of reasons for appeal, appellant contends that it is evident from the statement of Harry Adams that the subject claims "(referred to by reference as Tecopa, the nearest post office)," were a principal place of residence for him "during 1955, August 1958 through August 1960" and that, even when he "lived in Bloomington, his voting address was Tecopa from May, 1956 until August, 1958." In the alternative, appellant argues that: "The

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1/ As noted, infra, the qualifying period ran until July 23, 1962, not Oct. 23, 1962.

necessity that the claim be a principal place of residence \* \* \* is as of October 23, 1962 only and not for the entire qualifying period. 'Possession' is all that is required."

[1] Section 1 of the Act of October 23, 1962, supra, provides, in part, for the conveyance of an interest in the area within an unpatented mining claim to any occupant thereof, who is deemed to be a "qualified applicant" and who "applies therefor within the period ending June 30, 1971." An applicant is deemed to be "qualified" if he is "a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962." 30 U.S.C. § 702 (1976).

On appeal, appellant contends that an applicant must only establish that a mining claim constituted a principal place of residence "as of October 23, 1962." It is well established, however, that in order to be considered "qualified" under MCOA, an applicant or his/her predecessors in interest must have occupied a mining claim as a principal place of residence for the entire 7-year period prior to July 23, 1962. Catherine R. Blythe, 21 IBLA 217 (1975), and cases cited therein. This conclusion comes from a fair reading of the statute. The "possession" to which the statute refers is directed at "valuable improvements \* \* \* which constitute for him a principal place of residence." 30 U.S.C. § 702 (1976). Indeed, this reading comports with the purpose behind MCOA, i.e., to provide relief to those "on whom a hardship would be visited if they were required to move from their long-established homes on invalid mining claims." Dorothy L. Gordon, 18 IBLA 67, 69 (1974).

We conclude that appellant has not satisfied the requirement of proving occupation as a principal place of residence for the qualifying period. A principal place of residence is defined as follows:

[A]n improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography may make it impracticable for use. The term does not mean a site given casual or intermittent residential use, such as for a hunting cabin or for weekend occupancy.

43 CFR 2550.0-5(d). In his November 1968 statement, Harry Adams, appellant's predecessor in interest, states that the mining claims were occupied as a principal place of residence by him from July 23, 1955, to May 1956 and from August 1958 to May 2, 1961. The record shows that appellant's period of residence began July 4, 1961. The statement of Harry Adams plainly indicates that he did not consider the claims to be occupied by him as a principal place of residence for the period May 1956 to August 1958. His use can best be characterized as "casual or intermittent residential use." 43 CFR 2550.0-5(d). Appellant has failed to demonstrate that the claims were used as a principal place of residence by him and his predecessor in interest during the requisite 7-year period. Accordingly, we conclude that BLM properly rejected appellant's MCOA application.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Gail M. Frazier  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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R. W. Mullen  
Administrative Judge

